

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

SEVENSON ENVIRONMENTAL SERVICES

Employer

and

Case 13-RC-21770

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150

Petitioner

and

INTERNATIONAL UNION OF OPERATING ENGINEERS

Party-In-Interest¹

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on before a hearing officer of the National Labor Relations Board, herein referred to as the Board, to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.²

I. Issues

The issue presented is whether the appropriate unit should be defined to include the employees of the Employer who are working on a specific project known as the “Kress Creek/West Branch DuPage River Remediation” project, which is the only project currently ongoing by Severson within the Union’s territorial jurisdiction employing the classifications of employees petitioned for or whether, as the Petitioner seeks, the unit should be described in geographic terms to cover all operators employed by the Employer

¹ The International Union of Operating Engineers has a current 8(f) collective bargaining agreement with the Employer which encompasses the petitioned for employees. The record does not indicate whether the International wishes to be on the ballot.

² Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

within northern Illinois, eastern Iowa, and northwest Indiana, thereby making the Petitioner the 9(a) representative for all future projects within that geographical area.

II. Parties' Positions

Local 150 and the International Union contend that the petitioned-for unit encompassing its geographical jurisdiction is appropriate based on the fact that the Employer has done work in the Union's jurisdiction in the past and it is reasonable to assume that future work within its jurisdiction is likely.³

The Employer's position is that the scope of the unit should be confined to the "Kress Creek/West Branch DuPage River Remediation" project as that is the only project within the Union's jurisdiction where it has operating engineers working.

The Employer and the Union agree that the Employer is a construction industry employer and stipulated to exclude foremen from the bargaining unit. Similarly, they agree that health and safety personnel, quality control personnel and laborers (who are currently represented by the Laborers' Union) should also be excluded. Lastly, the parties agree that notwithstanding the that the Employer is a construction industry employer, the voter eligibility standard articulated in *Daniels/Stiney* should not apply. Instead, both parties agree that the standard eligibility formula should be used.

III. Decision

It is the opinion of the undersigned that the petitioned-for unit which includes operators and mechanics working within the Petitioner's geographical jurisdiction is not appropriate. By contrast, the appropriateness of a unit confined to the operators and mechanics working on the "Kress Creek/West Branch DuPage River Remediation" project is supported by the facts that it is a long term discrete project of the Employer with its own separate supervisory hierarchy and a history of collective bargaining between the Employer and the International Union of Operating Engineers on a project basis.⁴

Accordingly, IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following bargaining unit:

All full time and regular part time operators and mechanics performing work on the "Kress Creek/West Branch DuPage River Remediation" project located in West Chicago and Warrenville, Illinois, but excluding all other employees, all health and safety personnel, quality control personnel and laborers, office clerical

³ The Employer filed a Motion to Reopen the record to address the record evidence regarding the status of a pending bid it had within the Union's jurisdiction. However, in light of the Region's decision in this case, there is no need to reopen the record to include such evidence.

⁴ Neither the International nor the Petitioner took a position on the record regarding whether they wished to proceed in this alternative unit. Therefore, inasmuch as the unit scope is substantially different from that sought by the Petitioner, Local 150 may withdraw its petition, without prejudice, and similarly the International may withdraw from the election if it so chooses.

employees and guards, professional employees and supervisors as defined by the Act.

III. Statement of Facts

The Employer specializes in environmental remediation or the removal of contaminated waste or material and restoration of the area to its original condition. Headquartered in Niagara Falls, New York, the Employer has an office in Merrillville, Indiana employs approximately 600 employees, nationwide. Currently, Severson is performing approximately 30 current projects across the country.

At the current time, there is a project which has been ongoing since 2003 located in West Chicago and Warrenville, Illinois known as the “Kress Creek/West Branch DuPage River Remediation” project. At this site, Severson is removing contaminated sediment from the DuPage River (both in the river and on its banks) and restoring the river to its original condition. The project is slated to be concluded by late fall 2010. There are between 25 to 30 employees working at the site which includes the management team of project engineer, quality control manager, health and safety officer, radiation safety officer, three health physicists, superintendent, and two foremen, as well as the non-managerial employees which includes seven engineers and ten laborers.

The petitioned-for engineers operate the equipment that directly removes the contaminated sediment using excavators, loaders, forklifts, bulldozers, and off-road haulers.

By way of bargaining history, the Employer has been signatory to the National Environmental Remediation Project Agreement (known as “NERPA”) with the International Union of Operating Engineers during the entire length of the Kress Creek project. This agreement has also been used on other Employer projects on a project-by-project basis. The Employer also has had an agreement with Laborers Local 225 covering its laborer employees.

At the current time, there are no other projects currently being performed utilizing operating engineers within the Union’s jurisdiction. The Union’s jurisdiction was defined as “a good part of Northern Illinois, some eastern part of Iowa, and Northwest Indiana.” The only exception to that would be a project ongoing in East Chicago, Indiana but the operating engineers in that case are being supplied by a subcontractor.

IV. Analysis

In *Dezcon, Inc.*, 295 NLRB 109, (1989) the Board stated that when considering whether a petitioned-for bargaining unit in the construction industry is appropriate, “as in all other settings, the Board seeks to fulfill the objectives of ensuring employee self-determination, promoting freedom of choice in collective bargaining, and advancing industrial peace and stability.” Where, as here, the Employer is engaged in the construction industry, the Board has analyzed community of interest factors such as geographical separation of projects, common supervision, and the interchange of employees between projects to determine if the petitioned-for unit is appropriate. *Longcrier*, 277 NLRB 570, 571 (1985).

When a union seeks a broad geographical unit or a unit encompassing multiple projects, a critical factor demonstrating a sufficient community of interest between employees working on

different job sites is a finding that the employer in question retains a common nucleus of employees from project to project. *Longcrier*, supra at fn. 2 and cases cited therein. In *Longcrier*, 277 NLRB 570, 571 (1985), the Board reversed the Regional Director's finding that the Petitioner's Dallas county-wide unit of employees operating construction equipment was appropriate and instead found that there was no common nucleus of employees retained from project to project. Board cases also demonstrate that it is the petitioner's burden to demonstrate community of interest factors upon which a finding can be made that unit encompassing employees at multiple projects is appropriate. In *P. J. Dick Contracting, Inc.*, 290 NLRB 150 (1988) the union sought a broad 33 county unit, but the Board found appropriate only the 11 county unit the union had represented under 8(f) agreements. The Board stated, that although the 33 county unit might be appropriate, the union had failed to present any evidence to demonstrate its appropriateness. In *Premier Plastering, Inc.*, the Board rejected the unit sought by the Petitioner which consisted of craft employees in five counties because the "sparse" record failed to show that the employees in the five counties had a separate community of interest from the Employer's employees working in other counties. The Board found that the Regional Director in that case should have examined the all the community of interest factors in addition to the existence of a "core group" of employees, however, the Regional Director was unable to do so because "the Petitioner's failure to adduce sufficient record evidence". These cases placing the burden on the Petitioner to demonstrate a basis for finding these broad units appropriate are consistent with the holding in *Health Acquisitions Corp., d/b/a Allen Health Care Services*, 332 NLRB 1308 (2000), that absent a presumption of unit appropriateness, the petitioner must present some record evidence upon which the Board can base a decision as to the unit appropriateness.⁵

Based on the entire record in this matter, I find that there is insufficient record evidence to find that a broad based geographically defined unit as sought by the Petitioner would be appropriate. There is no showing that the Employer retains a core group of employees in the classifications sought by the Petitioner from job site to job site within the Union's jurisdiction. The record only shows one prior job site in the Petitioner's geographically jurisdiction, but it does not show there was any commonality of operators and mechanics between the prior project and the present on-going project. The record does not demonstrate any other basis upon which a community of interest between multiple projects within the Petitioner's jurisdiction may be found. There is no evidence showing common supervision between multiple projects, geographical proximity, employee interchange, or other common terms and conditions of employment. The Petitioner's geographical jurisdiction by itself is not a sufficient factor upon which a broad based geographical unit can be found to be appropriate. *Groendyke Transport*, 171 NLRB 997, 998 (1968). Further, this is an Employer with nation-wide projects and a unit description based upon the Petitioner's geographic jurisdiction is inappropriate in the absence of evidence that would differentiate the operators and mechanics within the Petitioner's jurisdiction from other operators and mechanics employed by the Employer elsewhere. Accordingly, I find that the appropriate unit can not be broadly based to include all of the Employer's operations, now and in the future, within the Petitioner's geographical jurisdiction. To do so would be to place employees in a unit without demonstrating that they share a community of interest with

⁵ Based upon the unit sought by the Petitioner and its burden to present some evidence to support the appropriateness of such a unit, I find the arguments of the Petitioner and the cases cited in its brief to be inapplicable to the determination herein as to a great extent they assume that the unit petitioned for is presumptively appropriate.

other employees in the unit and would deprive them of their Section 7 right to select a union of their own choosing.

Although the record in this matter is scant, there is a sufficient record basis for finding a unit of agreed upon classification of operators and mechanics limited to the Kress Creek project is appropriate. The record shows the Kress Creek project is a single location project of long duration and that this is the only project within Chicago area and the Union's geographical jurisdiction that employs operators and mechanics. The record also shows that the Kress Creek project has its own hierarchy of separate supervision, and there is a history of collective bargaining under Section 8(f) of the Act between the Employer and the International Union of Operating Engineers on a project by project basis. *Longcrier*, supra; *Alley Drywall*, 333 NLRB 1005, 1007 (2001).

V. Direction of Election

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Union of Operating Engineers, Local 150; International Union of Operating Engineers; or no labor organization.

VI. Notices of Election

Please be advised that the Board has adopted a rule requiring election notices to be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VII. List of Voters

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). The Regional Director shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, 209 South LaSalle Street, 9th Floor, Chicago, Illinois 60604, on or before **July 17, 2008**. No extension of time to file this list will be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VIII. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **July 24, 2008**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

DATED at Chicago, Illinois this 10th day of July 2008.

Arly Eggertsen, Acting Regional Director
National Labor Relations Board
Region 13
209 South LaSalle Street, 9th Floor
Chicago, Illinois 60604

CATS — Unit scope
Blue Book -4201209; 440-1760-9167-6200; 440-3375-7500-0000

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